

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MAURICE DAWSON, #M3508

PLAINTIFF

vs.

CIVIL ACTION NO. 3:14-cv-798-CWR-FKB

SERGEANT EDDIE WESTMORELAND,
OFFICER "UNKNOWN" SIMS,
JANE DOE, Nurse; and NURSE "UNKNOWN" WILSON

DEFENDANTS

**MOTION TO DISMISS FOR INSUFFICIENT PROCESS
AND INSUFFICIENT SERVICE OF PROCESS**

COMES NOW Defendant "Officer Sims," without waiving any affirmative defenses and specially appearing for the sole purpose of presenting this motion pursuant to Rule 12(b)(4) and Rule 12(b)(5) of the Federal Rules of Civil Procedure, and files this his Motion to Dismiss for Insufficient Process and Insufficient Service of Process, as follows:

1. This *pro se* prisoner suit filed on July 15, 2014, pursuant to 42 U.S.C. § 1983, arises out of claims by Plaintiff Robert Lee Moss (MDOC #59587) regarding alleged violations of his constitutional rights at East Mississippi Correctional Facility. *See* Complaint, Doc. [1]. Defendants include a person identified as "Officer Unknown Sims," as well as other correctional and nursing staff at EMCF. *Id.*

2. Although Jessie Houston is alleged to have accepted service of process on behalf of the correctional officers listed as Defendants, including "Officer Sims," she has no recollection of ever accepting service on this Defendant's behalf. Further, MTC has no record of anyone named "Officer Sims" or anyone with a similar name being employed at EMCF during the time period in question. *See* Houston Affidavit, Exh. "A." The identity of the Defendant sued as "Officer Sims" is currently unknown. *Id.* Additionally, Ms. Houston has never been authorized by anyone named

“Officer Sims” to accept service of process on that person’s behalf. *Id.*

3. Because the summons issued by the Court contains the incorrect name of the Defendant identified as “Officer Unknown Sims,” process is insufficient under Rule 4(b) of the Federal Rules of Civil Procedure, and Plaintiff’s claims against this Defendant should be dismissed pursuant to F.R.C.P. 12(b)(4).

4. Additionally, the Defendant sued as “Officer Unknown Sims” has not been served with process under any proper method for service under F.R.C.P. 4(e), and service on this Defendant is insufficient. Thus, Plaintiff’s claims against this Defendant should also be dismissed pursuant to F.R.C.P. 12(b)(5).

5. In support of the instant motion, this Defendant relies on his separate Memorandum of Authorities, as well as the following exhibit attached hereto:

“A” Affidavit of Jessie Houston.

WHEREFORE, PREMISES CONSIDERED, Defendant “Officer Unknown Sims” respectfully requests the Court grant his motion and dismiss the claims against him as a matter of law.

Respectfully submitted, this the 9th day of March, 2015.

OFFICER “UNKNOWN” SIMS, DEFENDANT

BY: /s/ Steven J. Griffin
OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2015, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which provided notice to all counsel of record, and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

Robert Lee Moss (MDOC #59587)
East Mississippi Correctional Facility
10641 Highway 80 West
Meridian, Mississippi 39307

/s/ Steven J. Griffin